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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,164	03/02/2004	Eiji Kato	FY.51039US1A	3401
20995	7590	09/05/2006	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			PHAN, HAU VAN	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/791,164

Applicant(s)

KATO ET AL.

Examiner

Hau V Phan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-10 and 12-37 is/are pending in the application.
- 4a) Of the above claim(s) 22-30,33,35 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-10,12-21,31-32,34-35,37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of group I, figures 1-5, claims 1-6, 8-10, 12-21, 31-32, 34 and 37 in the reply filed on 7/10/2006 is acknowledged. The traversal is on the ground(s) that if the search and examination of an entire application can be made with serious burden, the examiner must examine it on the merits, even though it includes to independent or distinct invention. This is not found persuasive because the species upon initial consideration are deemed to patentably distinct from one another and only admission by application that the species are obvious variant of one another would cause the species election to be withdrawn.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 22-30, 33, 35-36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/10/2006.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4, 6, 8-10, 12-21, 31-32, 34 and 37 are rejected under 35

U.S.C. 102(e) as being anticipated by Matsuura et al. (6,920,949).

Masuura et al. in figures 1-13, disclose an off-road vehicle comprising a frame, a plurality of wheels (64, 66) arranged to support the frame, an internal combustion engine (120) powering at least one of the wheels, and an air intake system having intake duct (502) arranged to supply air to the engine for combustion at a location above an uppermost surface of the wheels. The air intake system has an air inlet through (506), which ambient air enters the intake system. The air inlet positioned higher than an uppermost surface of the wheels, and the air intake duct extending rearwardly to the engine, at least a portion of the air intake duct being positioned lower than the uppermost surface of the wheels.

Regarding claim 2, Matsuura et al. disclose a hood (not number, see figure 2), which is configured to cover at least a front portion of the frame. The air inlet disposed below the hood.

Regarding claim 3, Matsuura et al. disclose the air intake comprising an air cleaner, which is configured to clean the air that enters through the air inlet.

Regarding claim 4, Matsuura et al. disclose at least portion of the air cleaner, which is positioned below the hood.

Regarding claim 6, Matsuura et al. disclose an off-road vehicle comprising a frame, a plurality of wheels (62, 64) arranged to support the frame, a hood (not number, see figure 2) configured to cover at least a first portion of the frame, an internal

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combustion engine (120) powering at least one of the wheels, and an air intake system arranged to supply air to an intake port of the engine for combustion. The air intake system comprises an air cleaner (144) configured to clean the air and an air delivery conduit arranged to deliver the air in the air cleaner to the engine. The air cleaner disposed below a central portion of the hood.

Regarding claim 8, Matsuura et al. disclose the engine having an air intake port communicating with a combustion chamber of the engine and the air delivery conduit connects the air cleaner to the air intake port.

Regarding claim 9, Matsuura et al. disclose the air delivery conduit comprising a throttle body that has a throttle valve to regulate an amount of air passing to the combustion.

Regarding claim 10, Matsuura et al. disclose the air delivery conduit including an accumulator disposed between the throttle body and the balance of the intake duct, an inner diameter of the accumulator is greater than an inner diameter of the rest of the delivery conduit.

Regarding claim 12, Matsuura et al. disclose a seat unit disposed on the second portion of the frame. The engine and the seat unit are positioned next to each other.

Regarding claim 15, Matsuura et al. disclose at least a portion of the air delivery conduit, which is positioned higher than the air cleaner portion.

Regarding claim 16, Matsuura et al. disclose at least a portion of the air cleaner that is positioned higher than the wheels.

Regarding claim 17, Matsuura et al. disclose at least a portion of the air cleaner that is positioned higher than the wheels.

Regarding claim 18, Matsuura et al. disclose a seat unit (50) that defines a surface onto which a driver or passenger of the vehicle sits. The surface positioned higher than the wheels, and at least a portion of the air cleaner is positioned higher than the surface.

Regarding claim 19, Matsuura et al. disclose the air cleaner having an air inlet and at least the air inlet is positioned higher than the surface.

Regarding claim 20, Matsuura et al. disclose the air cleaner having an air inlet and at least the air inlet is positioned higher than the wheels.

Regarding claim 21, Matsuura et al. disclose the hood additionally covers at least one of the wheels.

Regarding claim 31, Matsuura et al. disclose an off-road vehicle comprising a frame, a plurality of wheels arranged to support the frame, at least one seat supported by the frame, an internal combustion engine (120) powering at least one of the wheels, and an air intake system arranged to supply air to the engine. The air intake system comprises an air cleaner configured to filter the air. The seat being disposed in a fore to aft direction on the vehicle such that the air cleaner lies forward of the seat and at least a portion of the engine lies behind the seat.

Regarding claim 32, Matsuura et al. disclose the air intake system delivers supply air to at least one combustion chamber of the engine.

Regarding claim 34, Matsuura et al. disclose the air intake system delivers supply air to at least one combustion chamber of the engine.

Regarding claim 37, Matsuura et al. disclose at least a portion of one combustion chamber of the engine, which is positioned rearwardly of the seat.

Allowable Subject Matter

5. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments with respect to claims 1-37 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V Phan whose telephone number is 571-272-6696. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on 571-272-6914. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hau V Phan
Primary Examiner
Art Unit 3618



8/22/06